



COUNTY OF SACRAMENTO
DEPARTMENT OF COUNTY ENGINEERING
ARCHITECTURAL SERVICES DIVISION
RAYMOND J. WEBBER, A.I.A., DIVISION CHIEF
10545 Armstrong Ave., Ste. 201A
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PUBLIC WORKS AGENCY
WARREN H. HARADA, *Administrator*
STEVEN M. PEDRETTI, *Director*
County Engineering & Administration
ROBERT F. SHANKS, *Director*
Water Quality
JOHN W. NEWTON, *Director*
General Services
KEITH DeVORE, *Director*
Water Resources
TOM ZLOTKOWSKI, *Director*
Transportation
CHERYL CRESON, *Director*
Multi-Agency Collaborative
DAVID A. PELSER, *Director*
Waste Management and Recycling

March 26, 2003

Ms. Amy Terrell
California Regional Water Quality Control Board
Central Valley Region
3443 Routier Road
Sacramento, Ca. 95827

Dear Ms. Terrell:

Subject: Franklin Field Airport Land Use Covenant

Attached for your use is the signed and recorded land use covenant for the Franklin Field Airport. It is my belief that this is the final document required to enable your Board to issue a "No Further Action" designation for this site. It has been a pleasure working with you on this project, and your assistance has been appreciated by myself and the Sacramento County Airport System.

I hope this material provides you with everything required to complete this process. If you have any questions, or require any additional information, please contact me at 876-6310.

Respectfully,

Phillip C. Fischbach
Environmental Program Manager

Cc: Peter Urschel, Airports
Henry Nanjo, Deputy County Counsel



RECORDING REQUESTED BY:
County of Sacramento

WHEN RECORDED MAIL TO:
County of Sacramento
Sacramento County Airport System
Properties Section
6900 Airport Blvd.
Sacramento, California 95837

Sacramento County Recording
Mark Norris, Clerk/Recorder
BOOK **20030326** PAGE **0781**

Wednesday, MAR 26, 2003 9:21:21 AM
Ttl Pd \$0.00 Nbr-0001866176

MLB/11/1-7

**COVENANT AND AGREEMENT TO INCLUDE AN
ENVIRONMENTAL RESTRICTION TO REAL PROPERTY TO
COMPLY WITH THE TERMS OF THE MARCH 30, 2001 AGREEMENT
BETWEEN THE STATE OF CALIFORNIA, REGIONAL WATER QUALITY BOARD –
CENTRAL VALLEY REGION, AND THE COUNTY OF SACRAMENTO
(APN 146 0050 021 0000 AND 146 0040 029 0000)
(Portion of Franklin Field, Sacramento County)
*This instrument is an environmental restriction
Pursuant to California Civil Code Section 1471***

THIS COVENANT AND AGREEMENT (this "Covenant") is made as of the 11th day of March, 2003, by the County of Sacramento, a political subdivision of the State of California, Sacramento County Airport System ("Covenantor") and the Regional Water Quality Control Board, Central Valley Region ("Regional Board"), a California Public Agency ("Covenantee"), with reference to the following facts:

A. Convenantor is the Owner of that certain real property located in Sacramento County, California, on the west side of Bruceville Road, approximately $\frac{3}{4}$ mile north of Twin Cities Road, and described as Assessor's Parcel No. 146 0050 021 0000, on the Map recorded in Book 146, Page 05, and Assessor's Parcel Number 146 0040 029 0000, found in Book 146 Page 04 inclusive of Maps in the office of the County Recorder of the County; and more particularly described below:

Beginning at a point 370 feet East of the quarter section corner common to Sections 9 and 10, Township 5 North, Range 5 East, M.D.B.&M., thence Easterly 2270 feet, more or less, along the East-West center line of Sections 9 and 10 to the Southeast corner of the Northwest $\frac{1}{4}$ of Section 10; thence Northerly 5280 feet, more or less, along the North-South center line of Sections 10 and 3 to the Northeast corner of the Southwest $\frac{1}{4}$ of Section 3; thence Westerly 5280 feet, more or less, along the East-West center section line of Sections 3 and 4 to the Northwest corner of the Southeast $\frac{1}{4}$ of Section 4; thence Southerly 5280 feet, more or less, along the North-South center section line of Sections 4 and 9 to the Southwest corner of the Northeast $\frac{1}{4}$ of Section 9; thence Easterly 3010 feet,

more or less, along the East-West center line of Sections 9 and 10 to the point of beginning; containing 639.5 acres, more or less.
EXCEPTING THEREFROM a parcel of land containing one-half (1/2) acre in the form of a square in the Southwest corner of the Northeast quarter (NE 1/4) of Section 9,

hereafter the "Subject Property";

B. Covenantor discovered residual pesticide contaminated soil at specifically identified locations on the Subject Property as identified in the Soils Characterization Investigation – Phase II and Phase III – Franklin Field Airport performed by Harding Lawson Associates, March 26, 1993, a copy of which is maintained in the Sacramento County Airport System Offices of the Covenantor;

C. Covenantor reported the contamination to and the area became a matter under the jurisdiction of the Regional Board, identified by the Regional Board as "Franklin Field Airport, Sacramento County";

D. Covenantor has remediated the contaminated soil under a plan approved by the Regional Board, and is aware of the continued presence of residual pesticide contamination at or below Target Cleanup Levels for Industrial/Commercial property use at specifically identified locations on the Subject Property. The target cleanup levels are stated in the Development of Soil Target Cleanup levels – Franklin Field Airport performed by Harding Lawson Associates, November 4, 1994, a copy of which is maintained in the Sacramento County Airport System Offices of the Covenantor;

E. Covenantor has negotiated and reached a Stipulation concerning the Subject Property with the Regional Board such that the existing residual concentrations are acceptable to remain following remediation, provided that the following restrictions are placed on the Subject Property until such time as they are further remediated to a level acceptable to Regional Board, in which event these restrictions may be removed upon proper application stated in the stipulation. The terms of the Stipulation are included within a letter titled "Conditional Approval of Final Remedial Plan, Franklin Field Airport, Sacramento County", dated March 30, 2001, attached hereto and made part of this Covenant, a copy of which is maintained in the Sacramento County Airport System Offices of the Covenantor;

F. In order to protect present and future public health and safety, Covenantor desires and intends to ensure that the Subject Property is used in a manner that avoids potential harm to persons, the environment or property which may result from the presence of contaminants on the Subject Property.

G. This Covenant is given to bind Covenantor and successive owners of the Subject Property to restrictions on the future use of the Subject Property, limiting future uses to industrial classifications, restrictions which are for the benefit of the Regional Board.

ARTICLE 1
GENERAL PROVISIONS

- 1.1 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions ("Restrictions"), upon and subject to which the Subject Property and every portion thereof shall be held, used, improved, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to Civil Code section 1471; (b) inures to the benefit of the Covenantor and the Regional Board and passes with each and every portion of the Covenant Property, (c) is for the benefit of, and is enforceable by, the Covenantor and the Regional Board and all successors therein, and (d) is imposed upon the entire Covenant Property unless expressly stated as otherwise expressly stated herein.
- 1.2 Deemed Concurrence. All persons or entities acquiring any interest in the Subject Property or any portion thereof shall be conclusively deemed by such acquisition, lease or possession to have irrevocably agreed to the Restrictions for and among themselves, and their heirs, successors, assignees, agents, employees, licensees and lessees of such owners, heirs, successors, and assignees. In the event an owner of all or a portion of the Subject Property (including Covenantor) conveys fee title to some portions of the Subject Property to third parties but retains an interest in other portions of the Subject Property, upon the conveyance of the portion(s) of the Subject Property to third parties, the conveying owner shall forever be released and relieved of any further obligation or liability under the Covenant with respect to the portion of the Subject Property so conveyed for events arising from and after the date of such transfer. Upon any owner's sale or transfer of its entire interest in the Subject Property, such conveying owner (including Covenantor) shall forever be released of any further obligation or liability thereafter arising under this Covenant from and after the date of such transfer. Upon the termination of the leasehold interest of any occupant of the Subject Property, such occupant shall forever be relieved of any further obligation or liability thereafter arising under this Covenant.
- 1.3 Incorporation into Deeds and Leases. The Restrictions are hereby deemed to be incorporated by reference into each grant, creation or conveyance of any interest in the Subject Property or portion thereof occurring after the date this instrument is recorded in the Official Records of Sacramento County, California, whether or not referred to in the instrument effecting such grant, creation or conveyance.

ARTICLE 2
DEVELOPMENT, USE AND CONVEYANCE OF THE SUBJECT PROPERTY

- 2.1 The Subject Property is hereby precluded from a "Residential" Property use. This restriction may only be removed with the approval of the Regional Board Executive Officer, or successor in function.
- 2.2 Pursuant to a stipulation with the Regional Board, and the site remediation plan (Final Remedial Plan – Franklin Field Airport) performed by Harding ESE, dated January 24, 2001 a copy of which is maintained in the Sacramento County Airport System Offices of the Covenantor, the residual concentrations stated in the Final Closure Report, Remediation of Pesticide—Impacted Soil, – Franklin Field Airport, performed by Harding ESE, dated March 25, 2002, a copy of which is maintained in the Sacramento County Airport System Offices of the Covenantor, are acceptable to remain on the real property, and a "No Further Action" designation has been placed on the site.

ARTICLE 3
ENFORCEMENT AND MORTGAGEE PROTECTION

- 3.1 Enforcement. This Covenant is entered into for the express benefit of the Regional Board. Covenantor and/or Regional Board may enforce this Covenant or recover any and all damages recoverable under applicable law for breach in an action at law or in equity.
- 3.2 Mortgagee Protection. Notwithstanding any provision of this Covenant, no breach of the Restrictions, nor the enforcement of any provisions contained in this Covenant shall affect, impair or defeat the lien or charge of any duly recorded mortgage or deed of trust encumbering any portion of the Subject Property, or affect, impair, or defeat the interest of the mortgagee, or its successors or assigns (the "Mortgagee") pursuant to such a mortgage, provided that such mortgage is made in good faith and for value. All of the Restrictions shall be binding upon and effective against any owners whose title is derived through foreclosure, deed in lieu of foreclosure, or trustee's sale during the period of their ownership.
- 3.3 Nothing in this Covenant is intended to limit the authority of the Regional Board under the California Water Code or other applicable laws under its jurisdiction with respect to the property.

ARTICLE 4
VARIANCE AND TERMINATION

- 4.1 Variance. Covenantor, or any other owner of the Subject Property or any portion thereof, may apply to the Regional Board for a written variance from or modification of this Covenant. The Regional Board's consent thereto shall not be unreasonably withheld.

- 4.2 Termination. Covenantor, or any other owner of the Subject Property or any portion thereof or, with Covenantor's consent, any occupant of the Subject Property, may apply to the Regional Board for a termination of the Restrictions as they apply to all or any portion of the Subject Property owned or occupied by the applicant. The Regional Board's consent thereto shall not be unreasonably withheld.
- 4.3 Term. Unless modified or terminated in accordance with this Article or by Section 5.5 below, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE 5 MISCELLANEOUS

- 5.1 No Dedication Intended. Nothing herein shall be construed to be a grant or dedication, or offer to grant or dedicate, the Property or any portion thereof to the public for any purposes whatsoever.
- 5.2 Notices. All notices, demands, requests, consents, approvals, waivers, releases, modifications, terminations, or other communications relating to this Covenant shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or 2) three business days after deposit in the mail, if mailed by United States Mail, postage paid certified, return receipt requested:

To Covenantor: County of Sacramento
Sacramento County Airport System, Properties Section
6900 Airport Blvd.
Sacramento, California 95837

With a copy to: County of Sacramento
Building Design Division
10545 Armstrong Avenue, Suite 201A
Mather, California 95655

To Covenantee: Regional Water Quality Control Board, Central Valley Region
ATTN: Ms. Amy Terrell
3443 Routier Road, Suite A
Sacramento, California 95827-3015

Any party may change its address by notice to the other parties as provided above.

IN WITNESS WHEREOF, Covenantor and the Regional Board have executed this Covenant as of the date set forth above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By *Lela Collier*
Chairperson of the Board of Supervisors



ATTEST: *Cathy H. Turner*
Clerk of the Board of Supervisors

CENRAL VALLEY REGIONAL WATER QUALITY
CONTROL BOARD

By *Thomas R Pinkos*
Thomas R. Pinkos
Executive Officer

APPROVED AS TO THE TERMS AND CONDITIONS:

G. Hardy Acree
G. Hardy Acree
Director of Airports

APPROVED AND REVIEWED BY:

Henry D. Nanjo
Henry D. Nanjo
Deputy County Counsel

Attachment 1

The foregoing is a correct copy of a resolution adopted by the Board of Supervisors, Sacramento County, California

RESOLUTION NO. 2003-0253

**APPROVAL OF
COVENANT AND AGREEMENT
FOR FRANKLIN FIELD AIRPORT**

on 3-11-2003
Dated 3-17-2003
Clerk of said Board of
Supervisors

By Kay F. Johnson Deputy

BE IT RESOLVED AND ORDERED that the Chair of the Board of Supervisors be and is hereby authorized and directed to execute a Covenant and Agreement for Franklin Field Airport, in the form hereto attached, on behalf of the COUNTY OF SACRAMENTO, a political subdivision of the State of California, with the State of California, Regional Water Quality Control Board, Central Valley Region, a California Public Agency, precluding "residential" property use without prior approval of the Regional Water Quality Control Board, and to be recorded by the Sacramento County Clerk/Recorder.

On a motion by Supervisor Dickinson, seconded by Supervisor Nottolt, the foregoing resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 11th day of March, 2003, by the following vote, to wit:

AYES: Supervisors, Dickinson, Niello, Nottolt, Collin
NOES: Supervisors, None
ABSENT: Supervisors, Johnson
ABSTAIN: Supervisors, None

In accordance with Section 25183 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento on FEB 11 2003

By Kay F. Johnson
Deputy Clerk, Board of Supervisors

Glen Collins
Chair of the Board of Supervisors
of Sacramento County, California

FILED

MAR 11 2003

BOARD OF SUPERVISORS
BY Cathy H. Turner
CLERK OF THE BOARD

ATTEST:

Cathy H. Turner
Clerk of the Board of Supervisors

